



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
MARTHA E. BUCHANAN,)	CHARGE NO: 1997 CP 0762
)	EEOC: N/A
Complainant,)	ALS NO: 9897
)	
and)	
)	
RIZZA CHEVY / GEO,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

Complainant, Martha E. Buchanan, filed a charge with the Illinois Department of Human Rights (IDHR or Department) on October 1, 1996. The Charge alleged that she was denied her full and equal enjoyment of Respondent's services in its place of public accommodation in violation of Section 5-102(A) of the Illinois Human Rights Act (Act).

Respondent failed to attend the IDHR's scheduled fact finding conference. As a result, the IDHR found Respondent to be in default on January 10, 1997. Respondent filed a Request for Review on January 24, 1997, which the Department denied on March 25, 1997. On April 1, 1997, the IDHR filed a Petition for Hearing to Determine Complainant's Damages. On April 11, 1997, the Illinois Human Rights Commission (IHRC or Commission) entered an order of default against Respondent, Rizza Chevy/GEO and the matter was transmitted to the Administrative Law Section for hearing on the issue of damages and for further proceedings not inconsistent with the order. On April 17, 1997, the Chief Administrative Law Judge (ALJ) entered an order

that was duly served upon the parties setting the matter for hearing on damages on June 20, 1997 at 9:30 a.m.

On June 20, 1997, Complainant appeared pro se, while Respondent failed to appear. The issue of damages was heard. The transcript of the proceeding arrived and the parties were given until September 10, 1997 to submit Post-Hearing Briefs. Neither party filed a Post-Hearing Brief. No order was entered since such time and no motions were filed by either party. An order was sent to both parties on February 24, 2003 indicating that the present ALJ will render a Recommended Order and Decision (ROD) in the matter if the parties did not object. On March 28, 2003, Respondent's counsel filed notification with the Commission agreeing to have the ALJ render an ROD in this matter. The Complainant has failed to file any timely objections; therefore, Complainant's objection is deemed waived and thereby agrees to have the ALJ render a decision in this matter, pursuant to the February 24, 2003 order and 775 ILCS 5/8A-102(I)(4)(a) and (b) of the Illinois Human Rights Act. This matter is now ripe for decision.

FINDINGS OF FACT

The facts marked with asterisks are facts which were alleged in the Department Charge. Those facts were admitted as a result of a finding of default against Respondent by the Department.

1. Complainant is pro se.
2. Complainant filed a charge with the IDHR on October 1, 1996.
3. On January 10, 1997, the IHRC entered an order of default against Respondent.

4. On January 24, 1997, Respondent filed a timely Request for Review, which was denied on March 25, 1997.

5. On April 11, 1997, the IHRC entered an order of default against Respondent.

6. On April 17, 1997, an order was entered by the Chief ALJ setting the matter for a public hearing on damages for June 20, 1997. The parties were duly served notice of the hearing.

7. On June 20, 1997, Complainant appeared for the hearing, while Respondent failed to appear. The matter was heard.

8. On September 27, 1996, at approximately 5:00 p.m., Respondent employee, Car Salesperson Ray Javadi (male white), was informed by Complainant that she would be seeking her own financing for the purchase of a new car.*

9. On said date and time, Complainant attempted to negotiate for the price of a 1997 Monte Carlo automobile with Mr. Javadi. Whereupon, Mr. Javadi, through the instruction of his manager, requested to see Complainant's driver's license for the purpose of establishing Complainant's credit prior to any negotiations.*

10. Similarly situated non-black buyers who were providing their own financing to purchase a new vehicle from Respondent were not asked to produce their driver's licenses to determine their credit prior to negotiating the price of a vehicle.*

11. Complainant felt discriminated against because she was black and felt humiliation because the incident occurred in front of a large crowd of Caucasians and Hispanics in an all white neighborhood. Complainant felt compelled enough about the incident to send a letter to General Motors regarding the incident. Complainant also felt

somewhat insulted by Respondent's actions and did not like the feeling of not being trusted and being denied service because of the fact she was black. Complainant did not like the fact that her son had to witness the discriminatory act.*

12. Complainant has proven that she suffered emotional distress as a result of Respondent's actions, and as such should be compensated.

13. \$1,500.00 for emotional damage is a reasonable award under the present set of circumstances.

CONCLUSION OF LAW

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2 101(B)(1)(c), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action. Because of the default order entered in this matter, Respondent has admitted the allegations of the Department Charge that Complainant was denied her full and equal enjoyment of Respondent's services in its place of public accommodation in violation of Section 5-102(A) of the Illinois Human Rights Act (Act), when on September 27, 1996, at approximately 5:00 p.m., Complainant was subjected to unequal terms and condition in the form of being denied to actively negotiate the sale of a 1997 Monte Carlo automobile.

3. Complainant is entitled to the amount of \$1,500.00 in damages for emotional distress.

DISCUSSION

On April 11, 1997, a panel of the Human Rights Commission entered an order of default against Respondent. Pursuant to Section 8A-102(D)(4) of the Illinois Human

Rights Act, due to Respondent's default, the allegations in Complainant's charge are deemed admitted. As a result, there are no liability issues to discuss. Only damages issues remain to be determined.

The Illinois Human Rights Act provides that actual damages, "as reasonably determined by the Commission, for injury or loss suffered by the complainant" may be awarded as a remedy for the complainant. 775 ILCS 5/8A-104(B). Undeniably this includes compensation for emotional harm and mental suffering. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill.App.3d 339, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1st Dist. 1989). In this case, Complainant is requesting the amount of \$100,000.00 for emotional damage she suffered as a result of Respondent's unlawful act. Complainant basically requests damages for the pain and humiliation she suffered as a result of Respondent's unlawful act when she was denied the opportunity to negotiate a price on a new car from Respondent's place of business. Complainant testified that she felt discriminated against because she was black and indicated that during the time she was being discriminated against there was a large crowd of Caucasians and Hispanics in the showroom. Complainant further testified that she felt that Respondents were asking for her license because she was a black who was in an white neighborhood. Complainant's testimony showed that she felt compelled enough about the incident to send a letter to General Motors regarding the incident. Complainant also conveyed the fact that her son had to witness the discriminatory act. Lastly, Complainant conveyed her feelings about being somewhat insulted by Respondent's

actions and the feeling of not being trusted and being denied service because of the fact she was black.

The Commission has held that the actual damage provision of the Act includes compensation for emotional damages. Nichols and Boyd A. Jarrell & Co., 14 Ill. HRC Rep. 149, 159 (1984). The Commission has awarded damages for emotional harm in cases in which complainants have suffered such as a result of a respondent's unlawful denial of a public accommodation. Simpson and Thomas v. Dewey's Restaurant and Garantzotis, 40 Ill HRC Rep. 35 (1988); Blakemore and Glen's Restaurant, Inc., 35 Ill HRC Rep. 154 (1987); Johnson and Ranch Steak House, 31 Ill HRC Rep. 2 (1987). I find for the purposes of emotional damages, the Complainant has presented sufficient uncontradicted testimony to warrant an award for emotional damage.

The issue to be resolved here now is how much damage is Complainant entitled to under the given circumstances. In the case before me, Complainant seeks to be awarded the amount of \$100,000.00. Complainant testified that part of the amount she is seeking is for the full price of the vehicle in question along with insurance coverage. The remaining portion is for the discriminatory act itself, or at least in this context; for emotional damages. Complainant has failed to show any loss as it pertains to the claims of the cost of the vehicle and insurance; therefore, she is not entitled to those costs. In light of the case law pertaining to emotional damage awards, I find the amount requested by Complainant to be unreasonable. In the public accommodation cases of Simpson, Blakemore and Johnson (cited *supra*), the awards granted for emotional damage clustered in the area of \$3,500.00. The difference between those cases is the fact that they involved overt acts of discrimination based upon race, whereas in this case the act was more

discreet. Given the range set out by case law, as well as the facts in this case, along with the testimony regarding the impact Respondent's actions had upon Complainant, I believe that an award of \$1,500.00 for emotional damages is reasonable.

Finally, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of race.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of \$1,500.00 for emotional damages;

B. That Respondent be ordered to cease and desist from further acts of unlawful discrimination on the basis of race.

HUMAN RIGHTS COMMISSION

BY: _____
NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 24, 2003